IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

BLUE CREEK WIND FARM LLC 1125 NW Couch Street, Suite 700 Portland, Oregon 97209, Plaintiff v. OHIO DEPARTMENT OF NATURAL RESOURCES 2045 Morse Road Columbus, Ohio 43229, and OHIO POWER SITING BOARD 180 East Broad Street Columbus, Ohio 43215. Defendants.	: : : : : : : : : : : : : : : : : : :	Case No. 16 CV 4414 Judge French

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ANSWER AND DEFENSESOF THE OHIO POWER SITING BOARD

Now comes Defendant, the Ohio Power Siting Board (OPSB), by and through counsel, and hereby answers the Complaint for Declaratory and Injunctive Relief of Plaintiff Blue Creek Wind Farm LLC as follows:

THE PARTIES

1. Defendant OPSB admits Heartland Wind LLC is an affiliate of Plaintiff Blue Creek Wind Farm LLC (Blue Creek) and that Blue Creek was formerly owned by Iberdrola Renewables, LLC. Defendant OPSB is unable to admit or deny the

remaining allegations in Paragraph 1 of the Complaint for lack of information or belief.

2. Defendant OPSB admits the allegations contained in Paragraph 2 of the Complaint.

3. Defendant OPSB admits that Blue Creek develops and operates renewable energy projects in Ohio. Defendant OPSB is unable to admit or deny the remaining allegations in Paragraph 3 of the Complaint for lack of information or belief.

4. Defendant OPSB admits the allegations contained in Paragraphs 4 and 5 of the Complaint.

JURISDICTION AND VENUE

5. Defendant OPSB admits the allegations contained in Paragraphs 6, 7, and 8 of the Complaint.[1]

THE BLUE CREEK WIND PROJECT

6. Defendant OPSB admits Blue Creek explored development of the Blue Creek Wind Farm in Van Wert County and Paulding County, Ohio, and as part of that process Blue Creek conducted environmental studies and coordinated with the

[1] Plaintiff's Complaint contains a numbering error, in that there are two sets of Paragraph numbers 6-8 with one set being under one topic heading and the other set being under the next topic heading. For clarification, Defendant OPSB answers each set consistent with its topic heading provided in the Complaint.

OPSB. Defendant OPSB is unable to admit or deny the remaining allegations in Paragraph 6 of the Complaint for lack of information or belief.[2]

7. Defendant OPSB admits that after Blue Creek conducted environmental studies and coordinated with the OPSB, Blue Creek received a Certificate of Environmental Compatibility and Public Need (Certificate) from the OPSB in Case No. 09-1066-EL-BGN (Opinion, Order & Certificate, dated August 23, 2010), which authorized Blue Creek to begin construction of the project. Defendant OPSB is unable to admit or deny the remaining allegations in Paragraph 7 of the Complaint for lack of information or belief.

8. Defendant OPSB is unable to admit or deny the allegations contained in Paragraph 8 of the Complaint for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.

9. Defendant OPSB admits the allegations contained in Paragraph 9 of the Complaint.

10. Defendant OPSB is unable to admit or deny the allegations contained in Paragraph 10 of the Complaint for lack of information or belief.

11. Defendant OPSB admits the project area in Ohio is largely comprised of agricultural land. Defendant OPSB denies the allegations that the project area does not contain any state and federally listed species. Defendant OPSB is unable to admit or deny the remaining allegations in Paragraph 11 of the Complaint for

[2] The remainder of Defendant OPSB's Answer responses to allegations referencing "Wind Project" in Plaintiff Blue Creek's Complaint is limited to admitting only the Van Wert and Paulding County, Ohio locations. Defendant OPSB is unable to admit or deny the inclusion of Allen County, Indiana when referencing "Wind Project" in Plaintiff Blue Creek's Complaint.

lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.

12. Defendant OPSB admits it required Plaintiff Blue Creek to place a 0.50-mile non-development buffer around the great blue heron rookery, located within the northwest corner of the project area, to minimize direct and indirect impacts. Defendant OPSB further admits that it required Plaintiff Blue Creek to avoid staging or operating machinery within the 0.50-mile buffer during the great blue heron breeding season (February 1 to July 1). Defendant OPSB is unable to admit or deny the remaining allegations contained in Paragraph 12 of the Complaint for lack of information or belief.

13. Defendant OPSB admits the allegations contained in Paragraph 13 of the Complaint to the extent the allegations relate to the portion of the project area located in Ohio.

14. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 14 and 15 of the Complaint for lack of information or belief.

OHIO WIND POWER INDUSTRY

15. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 16, 17, 18, and 19 of the Complaint for lack of information or belief.

16. Defendant OPSB admits the allegations contained in Paragraphs 20 and 21 of the Complaint.

17. Defendant OPSB admits that Blue Creek and Timber Road II are operational wind farms in Ohio. Defendant OPSB further admits that it has previously certificated other wind farms in Ohio but Defendant OPSB cannot admit or deny the

remaining allegations contained in Paragraphs 22, 23, 24, 25, 26, 27, and 28 of the Complaint for lack of information or belief.

POST-CONSTRUCTION MONITORING ('PCM")

18. Defendant OPSB admits that Blue Creek conducted "Post-Construction Monitoring" (PCM) in 2012-2013. Defendant OPSB is unable to admit or deny the remaining allegations contained in Paragraph 29 of the Complaint for lack of information or belief.

19. Defendant OPSB admits that PCM for the Wind Project included standardized carcass searches of selected turbines, searcher efficiency trials, carcass removal trials, and acoustic bat monitoring, but Defendant OPSB is unable to admit or deny the remaining allegations in Paragraphs 30, 31 and 32 of the Complaint for lack of information or belief.

20. Defendant OPSB admits that as a result of monitoring efforts, Blue Creek gathered data and developed two reports: (1) "Post-Construction Fatality Surveys, Blue Creek Wind Farm, Van Wert County, Ohio, April-November 2012," dated January 2013 (the "2013 Report"); and (2) "Post-Construction Fatality Surveys, Blue Creek Wind Farm, Van Wert County, Ohio April-November 2013," dated January 31, 2014 (the "2014 Report"). Defendant OPSB is unable to admit or deny the remaining allegations in Paragraph 33 of the Complaint for lack of information or belief.

21. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 34 through 36 of the Complaint for lack of information or belief, or

because the statements therein contain arguments of law rather than statements of fact.

22. Defendant OPSB admits Blue Creek submitted a copy of the "2013 Report" and "2014 Report" to the Staff of the OPSB and subsequently claimed that the contents of those Reports should be protected and kept confidential as trade secrets. Defendant OPSB is unable to admit or deny the remaining allegations contained in Paragraphs 37, 38, 39, and 40 of the Complaint for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.

BLACK SWAMP'S FOIA REQUEST

23. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 41, 42, 43, 44, 45, and 46 of the Complaint for lack of information or belief.

BLACK SWAMP'S OHIO PUBLIC RECORDS REQUEST

24. Defendant OPSB admits it was informed by the Ohio Department of Natural Resources (ODNR) that ODNR received a public records request in 2014 from Black Swamp for bird survey data for the Blue Creek Wind Farm. Defendant OPSB is unable to admit or deny the remaining allegations contained in Paragraph 47 of the Complaint for lack of information or belief.

25. Defendant OPSB admits Black Swamp sent a public records request by email to the OPSB for bird survey data for the Blue Creek Wind Farm but cannot admit or

deny the remainder of Paragraph 48 of the Complaint for lack of information or belief.

26. Defendant OPSB is unable to admit or deny the allegations in Paragraph 49 of the Complaint for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.

27. Defendant OPSB admits that ODNR informed Blue Creek by letter dated September 3, 2014 that ODNR did not have enough information to substantiate Blue Creek's trade-secret claim and asked Blue Creek to provide additional explanation in support of its claim. Defendant OPSB is unable to admit or deny the remaining allegations in Paragraph 50 of the Complaint for lack of information or belief.

28. Defendant OPSB is aware that Blue Creek agreed to work with Black Swamp in regard to its public records request. Defendant OPSB is unable to admit or deny the remaining allegations contained in Paragraph 51 of the Complaint for lack of information or belief, or because they are arguments of law rather than statements of fact.

BLUE CREEK'S MEETING WITH BLACK SWAMP

29. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 52, 53, 54, 55, and 56 of the Complaint for lack of information or belief.

WITHOUT COURT ORDER, ODNR INTENDS TO DISCLOSE THE PROTECTED INFORMATION

30. Defendant OPSB admits the allegations contained in Paragraph 57 of the Complaint.

31. Defendant OPSB is unable to admit or deny the allegations in Paragraph 58 of the Complaint for lack of information or belief, or because the statements therein contain arguments of law rather than statements of fact.

COUNT I
DECLARATORY JUDGMENT

32. Defendant OPSB is unable to admit or deny the allegations in Paragraph 59 of the Complaint for lack of knowledge or belief, or because the statements therein contain arguments of law rather than statements of fact.

33. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 60 through 63 because they are arguments of law rather than statements of fact.

34. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 64 through 66 of the Complaint for lack of information or belief, or because they are arguments of law rather than statements of fact.

COUNT II
INJUNCTIVE RELIEF

35. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 67 and 68 of the Complaint for lack of information or belief, or because they are arguments of law rather than statements of fact.

36. Defendant OPSB admits that ODNR informed Blue Creek that ODNR intends to comply with Ohio's Public Records Act unless a court of competent jurisdiction determines that the documents in question are subject to trade secret protection or are otherwise exempt from disclosure. Defendant OPSB cannot admit or deny the remaining allegations of Paragraph 69 of the Complaint for lack of information or belief, or because they are arguments of law rather than statements of fact.

37. Defendant OPSB is unable to admit or deny the allegations contained in Paragraphs 70 through 74 of the Complaint for lack of information or belief, or because they are arguments of law rather than statements of fact.

38. Defendant OPSB denies any other allegation in the Complaint not specifically admitted in this answer.

AFFIRMATIVE DEFENSES

39. Plaintiff Blue Creek fails to state a claim upon which relief may be granted.

40. Plaintiff Blue Creek fails to name all necessary parties.

Respectfully submitted,

/s/ John H. Jones

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PROOF OF SERVICE

I hereby certify that on June 8, 2016, the foregoing document was served on all parties or their counsel of record through the CM/ECF if they are registered users, or, if not, by placing a true and correct copy in the Unites States mail, postage prepaid, to their address of record.

/s/ John H. Jones

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